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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA INCORPORATED

Defendant.

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

Case No. A04-49 (JWS)

DECLARATION OF LUKE
COLE IN SUPPORT OF
PLAINTIFFS' OBJECTIONS
TO TECK COMINCO & NANA'S
FINAL EXHIBIT LIST

DECLARATION OF LUKE COLE IN SUPPORT
OF PLAINTIFFS' OBJECTIONS TO TECK
COMINCO'S FINAL EXHIBIT LIST

1 I, Luke Cole, declare:

2 1. I am over 18 and not a party to this action.

3 2. The federal Environmental Protection Agency has withdrawn the 2007 permit to Teck
4 Cominco's Red Dog Mine. Following that withdrawal, the state withdrew its 401 certification as
5 well. I know this as I filed the administrative appeals that led to both withdrawals, so I have been
6 served with such notices as counsel for appellants.

7 3. In response to the earlier KRPC litigation and this litigation, Teck Cominco made a
8 wholesale set of revisions to its DMRs in 2003 and again in 2005, often "revising" data that had
9 been submitted to EPA more than five years earlier.

10 4. The revisions are perhaps most brazen in the cyanide context. On May 19, 2005 –
11 long after the close of document discovery in this case – Teck Cominco amended 15 of its
12 DMRs, from June 1999 to September 2002, to show a different monthly average cyanide number
13 in the DMR's table. Teck Cominco revised 15 out of the 16 DMRs that Adams alleged
14 demonstrated a monthly cyanide violation. It did not revise any other DMRs at this time except
15 those which demonstrated cyanide monthly violations.

16 5. In late May 2005, after the document discovery cut-off, as Adams was finishing
17 preparing its summary judgment motion, Teck Cominco sent it 15 new revised DMRs, and
18 subsequently refused to stipulate to the use of the 15 earlier DMRs which it had authenticated in
19 the KRPC litigation.

20 6. As Teck Cominco well knows, the only WET violations at the mine that Adams has
21 alleged all have to do with toxicity exceedances in the test of *Ceriodaphnia dubia* (also known as
22 the "water flea"), not *Pimephales promelas* (also known as the "fathead minnow").

23 _____ I declare under penalty of perjury that the foregoing is true and correct. Executed this 29th
24 day of January 2008 at San Francisco, California.

25 _____
26 /s/ Luke Cole
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January 2008, a true and correct copy of the foregoing Declaration of Luke Cole in Support of Objections to Teck Cominco's Final Exhibit List was served, via electronic mail, on the below identified parties of record:

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/S/

Luke Cole